Appendix A

In the United States District Court for the District of Alaska, at Juneau

Civil Action No. J-19-67

International Union of Operating Engineers, Local 302, AFL-CIO, a labor union,
Plaintiff,

vs.

The Alaska Chapter of Associated General Contractors of America Inc., an employer,
Defendant,

and

The State of Alaska,
Defendant-Intervenor.

JUDGMENT

The above-entitled matter having been consolidated; for all purposes, with Cause No. J-18-67, and a Three Judge Court having previously been ordered in each case, pursuant to the provisions of 28 USC, section

2281, and the matters having come regularly before the Court for hearing on the merits on June 24, 1968, upon the pleadings and Stipulation of Facts, and all parties having been heard, and the Court having on the 1st day of August, 1968, made and filed herein its Memorandum Opinion, which by its terms serves as Findings of Fact and Conclusions of Law in accordance with Rule 52 FRCP; now, therefore

It Is Ordered, Adjudged and Decreed as follows:

(1) Those certain Alaska statutes codified as A.S. 23.40.045 to A.S. 23.40.060 inclusive are hereby declared to be unconstitutional as in violation of the Supremacy Clause of the United States Constitution (Art. VI sec. 2) as an invasion of an area pre-empted by Congress in the Labor Management Relations Act of 1947 as amended (Art. VI § 2) as invasion of an area pre-empted by Congress in the Labor Management Relations Act of 1947 as amended (29 USC sections 151 ff).

(2) All officers, agents, or employees of the State of Alaska are permanently enjoined from enforcing A. S. 23.40.045 to 23.40.060, inclusive, and the regulations promulgated thereunder, or from initiating or prosecuting any proceeding under purported authority of the same.

(3) The enforcement of the Superior Court's preliminary injunction in Cause No. 67-2024E, Superior Court for the State of Alaska, Third Judicial Dis-

trict, entered on March 8, 1968, is permanently enjoined.

Dated this 23rd day of August, 1968.

Walter Ely
United States Circuit Judge
Raymond E. Plummer
James A. von der Heydt
United States District Judges

R. Boochever
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Filed August 26, 1968.

Appendix B

In the United States States District Court
for the District of Alaska

William Tyree, Clark Ingram, James O. Green, Kenneth E. Wright, Donald E. Conner, Arlin A. DeChaney and International Union of Operating Engineers, Local 302, AFL-CIO, a Labor union, Plaintiffs, and National Labor Relations Board, Plaintiff-intervenor, vs. G. Kent Edwards, Attorney General of the State of Alaska; Thomas J. Moore, Commissioner of Labor of the State of Alaska; and Walter J. Hickel, Governor of the State of Alaska, Defendants.	J-18-67	Consolidated
International Union of Operating Engineers, Local 302, AFL-CIO, a labor union, Plaintiff, vs. The Alaska Chapter of Associated General Contractors of America, Inc., an employer, Defendant, and State of Alaska, Defendant-intervenor.	J-19-67	Consolidated

OPINION

Before: The Honorable Walter Ely, Circuit Judge, and The Honorable Raymond E. Plummer and the Honorable James A. von der Heydt, District Judges.

von der Heydt, District Judge:

Plaintiffs seek a declaratory judgment decreasing Alaska's Local Union Autonomy Act", as amended,

to be unconstitutional, and a permanent injunction restraining enforcement thereof.

The causes have been consolidated by order of the Court for all proceedings subsequent to March 27, 1968. Prior to consolidation, an identical three judge district court, as provided by Title 28, U.S.C., Sec. 2284, had been designated by the Chief Judge of the Circuit to hear and determine the appropriate issues presented in each case.

The three judge court so designated convened to hear arguments on the merits at Juneau, Alaska, June 24, 1968, following which the Court took the cause under advisement.

The facts, briefly, are these. Plaintiffs are an international labor organization, Local 302, which is a member thereof, and individual members of the local union. The National Labor Relations Board has appeared as an Intervenor-Plaintiff. Defendants are the State of Alaska, its Governor, Attorney General, Commissioner of Labor, and the Alaska Chapter of Associated Contractors of America, Inc., the latter designated as "an employer".

Local 302 is headquartered at Seattle, Washington, and does business in Alaska and Washington. A majority of its members reside outside the State of Alaska.

It appears that Alaska's Commissioner of Labor, over a period of time, has received numerous complaints that Local 302 discriminates against its Alaska resident members in job referrals, in favor of those members residing outside the State of Alaska. After

legislative passage of the original Act in early 1967, a State Senate committee was established further to investigate the problem. By its report, dated July 17, 1967, the committee concluded that Local 302 in fact did discriminate against resident Alaska workers, and particularly against those who favored a local autonomous union, by dispatching non-residents from Seattle to jobs in Alaska. Subsequent to this report, the 1968 Legislature enacted amendments to the local autonomy statute. The entire Act, as amended, is challenged here.

The Attorney General of Alaska brought both civil and criminal proceedings in the State courts to enforce the Act. The civil proceedings resulted in an injunction entered by the Superior Court. The Attorney General of Alaska has stipulated to withhold prosecution of all state proceedings, pending this Court's decision on the issues before it.

We confine ourselves to a determination of two questions:

1. The constitutionality of Alaska Statutes, Sections 23.40.045 to 23.40.060, the so-called "Local Autonomy Act".
2. The validity of the injunction issued March 8, 1968, by the Superior Court of the State of Alaska, Third District of Alaska, at Anchorage.

The local Autonomy Act, as amended, is as follows:

> Sec. 23.40.045. Records. (a) A person who or labor organization which operates a hiring-hall or furnishes labor exclusively under a labor-management contract and which does not have a char-

tered local in this state shall maintain accurate hiring, dispatching and membership records in accordance with regulations promulgated by the commissioner.

(b) The records required under (a) of this section shall be open to inspection by the commissioner or his authorized representative.

Sec. 23.40.050. Local Labor Organizations. It shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Alaska not to have at all times one or more duly chartered and established local organizations in this state.

Sec. 23.40.052. Interference in Chartering Prohibited. It shall be unlawful for an officer of any national, international labor or local labor organization, having 100 or more members in good standing who reside or work in Alaska to wilfully discourage or impede or attempt to discourage or impede, by means of coercion or other unlawful act, the chartering and establishment of a local organization in this state in accordance with sec. 50 of this chapter. However, this section does not apply to a labor organization which has a chartered local in this state.

Sec. 23.40.054 Civil Enforcement. In addition to the criminal penalties provided for in this chapter, the attorney general may enforce the provisions of this chapter by appropriate civil proceedings, including injunctive relief, against threatened, repeated or continuous violations of this chapter or regulations adopted under it. These proceedings may be brought against an international, national or local labor organization

or an officer of an international, national or local labor organization.

Sec. 23.40.056. Exemptions. (a) The commissioner may grant an exemption from the provisions of secs. 45-60 of this chapter to a labor organization which

(1) has so few members who reside in Alaska that chartering and operating a local would work a financial hardship on these members;

(2) maintains local-hire preference provisions in all of its labor-management agreements in the state; or

(3) maintains provisions in its constitution and bylaws for the election, by and from among the members of the organization who reside in Alaska, of a business agent or other person in charge of hiring-hall in Alaska, and dispatch and grievance procedures.

(b) Exemptions granted under this section shall be applied for and issued on an annual basis in accordance with regulations adopted by the department.

Sec. 23.40.060. Penalties. (a) Any national or international labor organization which violates sec. 50 of this chapter, upon conviction, is punishable by a fine of not less than $1,000 or more than $10,000.

(b) An officer of any national, international or local labor organization who violates sec. 52 of this chapter is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment of not more than one year, or by both.

(c) Failure to maintain accurate records in accordance with sec. 45(a) of this chapter and the regulations promulgated under it is a misdemeanor punishable by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both.

(d) Wilful failure to comply with sec. 45(b) of this chapter is a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both.

Plaintiffs assert that the statute is unconstitutional because it:

1) conflicts with the National Labor Relations Act[1] and is thus unconstitutional under the Supremacy Clause.[2]

2) imposes an undue restraint upon interstate commerce.

3) impairs obligations of the Union's present contract with the Associated General Contractors.

4) violates the Equal Privileges and Immunities Clause.

5) impairs plaintiffs' right of free speech and assembly.[3]

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[1]61 Stat. 136 (1947), as amended, 29 U.S.C. § 151 et seq. (1964).

[2]U.S. CONST., art. VI, § 2.

[3]Plaintiffs also contend that the statutes in question are unconstitutional because they are beyond the power of the State to legislate as an attempted regulation of the internal affairs of unincorporated associations, unwarranted by the proper exercise of any police power, and because they are unduly vague and uncertain. These contentions have not been pursued in subsequent pleadings and it is assumed they have been abandoned.

Defendants contend that the Local Autonomy Act is a constitutional exercise of the State's police power, that it does not conflict with the National Labor Relations Act, and that the injunction of the Superior Court is valid and proper.

With this background in mind, we turn to the issues before us. We limit ourselves to plaintiffs' first asserted point, and decide whether the Act in question operates in an area pre-empted by Congress, and is therefore unconstitutional under the Supremacy Clause of the Constitution of the United States. We do so find.

We quote first the "ground rules for preemption" noted by the United States Supreme Court:

> The ground rules for preemption in labor law, emerging from our *Garmon* decision, should first be briefly summarized: in general, a State may not regulate conduct arguably "protected by § 7, or prohibited by § 8" of the National Labor Relations Act. . . . [T]he greatest threat against which the *Garmon* doctrine guards . . . [is] a State's prohibition of activity that the Act indicates must remain unhampered.[4]

Local regulation is invalid if it does or may conflict with federal legislation or policy.[5]

Plaintiffs assert that the statutes in question conflict with the National Labor Relations Act,[6] and cite

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[4] *Hanna Mining Co. v. District 2, Marine Engineers Beneficial Ass'n*, 382 U.S. 181, 187, 193 (1965).

[5] *E.g., Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714, 722 (1963); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242 (1959).

[6] *Supra*, note 1.

Hill v. Florida.[7] In *Hill* a Florida statute which precluded a convicted felon from serving as a union business agent was declared unconstitutional. The Supreme Court held that the statute interfered with the employees' freedom of choice in selecting a collective bargaining agent, and that such a provision "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[8] Moreover, since an employer could not bargain with a duly selected representative of the workers unless the union had complied with the Florida statute, it impermissibly interfered in the collective bargaining process.[9] Finally, the Florida statute was held unconstitutional because the union could be enjoined for failure to comply with its record-keeping requirements. Each of these factors is present in this case.

However, defendants contend that *Hill* has, for all practical purposes, been overruled by *DeVeau v. Braisted.*[10] The local statute in *DeVeau,* which was similar to the *Hill* provision, was upheld upheld by the Supreme Court. We disagree with defendants' contention.

The legislation in *DeVeau* was the result of investigations by law enforcement agencies of New York

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[7]325 U.S. 538 (1945).

[8]*Id.* at 542.

[9]Here, the union has brought an action for breach of contract against the Alaska Chapter of the Associated General Contractors, which organization declined to honor its contracts with Local 302 until the latter had complied with the Local Autonomy Act.

[10]363 U.S. 144 (1960).

and New Jersey of corruption and crime on the waterfront, and hearings based on the report of the New York Crime Commission. This compact was submitted to Congress for approval. After conducting an independent investigation Congress approved the compact. As the Supreme Court itself noted, this background distinguishes *DeVeau* from *Hill:*

> The decision in *Hill v. Florida* . . . in no wise obstructs this conclusion. An element most persuasive here, congressional approval of the heart of the state legislative program explicitly brought to its attention, was not present in that case. Nor was it true of *Hill v. Florida,* as it is here, that the challenged state legislation was part of a program, fully canvassed by Congress through its own investigations, to vindicate a legitimate and compelling state interest, namely, the interest in combatting local crime infesting a particular industry.[11]

If any doubt persists as to the vitality of the *Hill* decision it should be dispelled by the Supreme Court's recent reaffirmance of that case in *Nash v. Florida Industrial Commission.*[12]

We conclude that the statutes comprising the Local Autonomy Act, and regulations relating thereto, clearly indicate a state purpose which invades a field preempted by Congress. Impermissibly, the Act interferes with the full freedom of workers to choose a bargaining agent and in the collective bargaining

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[11] *Id.* at 155.

[12] 389 U.S. 235, 240 (1967).

process.[13] Because of conflict with federal law and policy, both actual and potential, the Act, as amended, is therefore unconstitutional under the Supremacy Clause.[14]

This conclusion obviates the necessity to consider other serious constitutional issues raised by plaintiffs, and we reserve decision as to those questions.[15]

We now turn to the Superior Court's injunction.

On March 8, 1968, the Court granted a preliminary injunction sought by the State. It provides that the union shall not

1) operate its hiring-hall or dispatch members in a discriminatory manner.
2) violate a member's seniority preference under existing collective bargaining agreements.
3) grant an employment preference not based on contract seniority rights to non-Alaska resident members.

Defendants contend that the discrimination which is prohibited by the injunction constitutes a breach of the union's duty to fairly represent its workers, and is permissible under the Supreme Court's recent decision in *Vaca v. Sipes*,[16] regardless of the Local Au-

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[13]See *Hill v. Florida*, note 7 *supra*; *Local 24, International Bhd. of Teamsters v. Oliver*, 358 U.S. 283 (1959).

[14]*Nash v. Florida Industrial Commission*, note 12 *supra*; *Hill v. Florida*, note 7 *supra*.

[15]See, *e.g.*, *Rosenberg v. Fleuti*, 374 U.S. 449 (1963); *Garner v. Louisiana*, 368 U.S. 157 (1961); *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101 (1944); *McNamara v. Remenyi*, 391 F.2d 128 (9th Cir. 1968).

[16]386 U.S. 171 (1967).

tonomy Act. Plaintiffs argue that this preliminary relief, by itself, encroaches on the preemptive sphere of the National Labor Relations Act, since the Board has exclusive jurisdiction to remedy the type of discrimination alleged in the Superior Court proceeding.

In *Vaca* the Court held that a state court has jurisdiction of a worker's suit for a union's breach of its statutory duty of fair representation. The breach of duty which the union member alleged was the union's failure to take his grievance to arbitration under the bargaining agreement's grievance procedure.

We consider now the question of whether the discrimination here alleged is a breach of the duty to fairly represent under the *Vaca* ruling, noting the following language:

> A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, *discriminatory,* or in bad faith.[17]

Two factors on which the *Vaca* decision relies are present here.

First, the Court noted that the Board's General Counsel has unreviewable discretion to decide whether to institute an unfair labor practice complaint, thus leaving a union member without remedy upon his charge that the union breached its duty to fairly represent him. Second, fair representation suits are often intimately related to suits under § 301 o the Labor Management Relations Act charging an employer with

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[17] *Id.* at 190 (emphasis added).

breach of its contract, an action for which state courts have jurisdiction. Here, the Union has already instituted such an action against the Alaska Chapter of Associated General Contractors of America, Inc.[18]

However, there remains one significant difference between *Vaca* and the instant case which we believe to be determinative: the type of discrimination alleged. In *Vaca,* the Court was concerned with discriminatory cases "where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the NLRB".[19] Clearly, the Court did not intend that state courts were henceforth to have concurrent jurisdiction with the National Labor Relations Board of all unfair labor practices proceedings in which discriminatory conduct is alleged.[20] The alleged discrimination which is here prohibited by the Superior Court injunction—job referral discrimination to strengthen union authority—clearly is within the exclusive jurisdiction of the National Labor Relations Board.[21] Such discrimination constitutes a violation of Section 8(b)(1)(A) of the National Labor Relations Act.[22] It fol-

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[18]See note 9 *supra.*

[19]386 U.S. at 179.

[20]This conclusion is supported by the Supreme Court's reference to the *Garmon* principle, see note 4 *supra* and accompanying text, as "a general rule". 386 U.S. at 179. *Vaca* does, however, seem to leave undecided the standard for determining when it can be fairly inferred that Congress intended exclusive jurisdiction to lie with the National Labor Relations Board. *Compare Vaca v. Sipes,* note 16 *supra,* with *Plumbers' Union v. Borden,* 373 U.S. 690, 694 (1963).

[21]*Plumbers' Union v. Borden,* note 16 *supra.*

[22]29 U.S.C. § 158(b)(1)(A) (1964).

lows, therefore, that the Superior Court was without jurisdiction to grant the preliminary injunction.

We find that all concerned—the public, labor, and employers, are most efficiently served by authority vested by Congress in one federal agency, empowered to reach across the entire nation and bring national consistency to the broad field of labor relations and the related complex problems arising thereunder. The result would be chaotic in the absence of such a consistent policy. Certainly it is not intended that each of the hundreds of state courts of the several states be at liberty, individually, to decide these issues, national in scope and implication. Congress so empowered the National Labor Relations Board, and to that agency, for these purposes, it granted exclusive jurisdiction.

The foregoing makes it clear that we have rejected the contention that this court should await a determination by Alaska's highest court as to whether or not the legislation harmonizes with the federal constitution. We already have recited that criminal proceedings have been instituted. There exists the threat of contempt citations under the state court injunction. Since the question is so clearly free of doubt, the Alaskan courts should, in our judgment, be immediately relieved of additional burdens in connection with the problem, and the plaintiffs, also, should not be required unnecessarily to undergo the vexations and expense of different proceedings in the state courts, which, in the end, would have served no useful purpose.

The enforcement of the Superior Court's preliminary injunction in Cause No. 67-2024E, Superior Court for the State of Alaska, Third Judicial District, entered on March 8, 1968, is permanently enjoined.

All officers, agents, or employees of the State of Alaska are permanently enjoined from enforcing A.S. § 23.40.045 to 23.40.060, and the regulations promulgated thereunder, or from initiating or prosecuting any proceeding under purported authority of the same.

This opinion may constitute findings of fact and conclusions of law as provided by Rule 52, Federal Rules of Civil Procedure. Plaintiffs' counsel may prepare an appropriate form of judgment.

Dated at Anchorage Alaska, this 1st day of August, 1968.

/s/ Walter Ely
United States Circuit Judge

/s/ Raymond E. Plummer

/s/ James A. von der Heydt
United States District Judges

Appendix C

In the Superior Court for the State of Alaska

Third Judicial District

State of Alaska, Plaintiff, vs. International Union of Operating Engineers, Hoist, Shovel and Dredgemen, et al., *Defendants.*	No. 67-2024 E

MEMORANDUM DECISION

Appearances:

For Petitioner

Honorable Edgar Paul Boyko
Attorney General
Miss Kay Richie, Assistant
Attorney General

For Respondents

Joe P. Josephson, Esq.
Anchorage, Alaska
J. Duane Vance, Esq.
Seattle, Washington

LEWIS, J.:

On October 13, 1967, Plaintiff, State of Alaska filed in this Court a complaint for injunction and for other relief, under authority of AS 23.05.060 (Empowering

the Department of the State of Alaska to enforce all State Labor Laws; AS 23.05.130 (providing that the Department shall aid and assist resident workers with respect to rightful preference to employment in Alaska industry); AS 23.05.210 (Empowering the Attorney General to prosecute civil cases arising under state labor law referred to him by the Department of Labor) and AS 44.23.020 (b) (7) (empowering the Attorney General to represent the State in litigation to which the State is a party.)

The complaint alleges that defendants have intentionally refused to comply with AS 23.40.050 (the so-called "Local Autonomy Act") and an emergency regulation promulgated thereunder, which, in essence, provides that national or international labor organizations having one hundred or more members in good standing residing or working in Alaska must have one or more local organizations in the State. (AS 23.40.060 provides for a fine of not less than $1,000.00 nor more than $10,000.00 for each violation of the previous section.)

The complaint states that a large number of Alaska residents, members of defendant international and local labor organizations, but constituting a minority of the membership of Local 302, (which is based in Seattle), have been improperly discriminated against and have been deprived of employment by the dispatch of non-resident members to Alaska jobs. The complaint alleges that the said Alaska residents and union members, and their families and the communities in which they reside are suffering economic hard-

ship and that the State is required to provide them with employment compensation and other welfare benefits which would be unnecessary but for the conduct of defendants. In addition the State alleges that the incomes of the said Alaska resident union members are lost to the people of the State because of the non-employment of the said Alaska resident union members. The complaint alleges that, by dispatch of non-resident workers to the job sites, the expense of such work is increased for Alaska employers and, hence, Alaska consumers generally, because the employers are required to pay travel expenses and wages for travel time from residence to the place of work. The complaint alleges that such conduct on the part of defendants constitutes an enjoinable public nuisance, and that no speedy and adequate remedy at law exists to redress the injury to the public.

Plaintiff asks that defendants be enjoined from conducting business or performing the functions of a labor organization within the State of Alaska until compliance shall have been had with AS 23.40.050 and the emergency regulation promulgated thereunder and directing defendants to charter, establish and organize a bona fide autonomous local organization in the State of Alaska.

On December 18, 1967 defendants filed a motion to dismiss on the grounds that AS 23.40.050 and AS 23.40.060 violate the United States Constitution in that they deprive members of Local 302, who are non-residents of the State of Alaska, of the privileges and immunities of citizens of the several states in violation

of Article IV, Sec. 2. United States Constitution; deprive defendants, and the individuals they represent of rights existing under the laws of the United States, in violation of the supremacy clause of the Constitution of the United States Article VI (second clause); constitutes an unreasonable burden upon interstate commerce; in violation of Article I Sec. 8, United States Constitution impairing the obligation of contract (Art. I Sec. 10); or an attempted regulation by the state of the internal affairs of an unincorporated association, and hence beyond the police power of a state; or unduly vague and uncertain in violation of Fourteenth Amendment Sec. 1, United States Constitution and are an impairment of the constitutional right of assembly under First Amendment of the Constitution of the United States. The individual defendants move separately to dismiss in that the Alaska Statutes purport to apply only to national and international unions and not to local unions or individuals.

Alternatively, defendants move to strike the allegations in paragraph 4 of the complaint respecting "discrimination with respect to holding office" "discrimination with respect to employment dispatch and other functions of defendant Local, on the ground that Labor Management Relations Act of 1947, as amended (29 USC 151, et seq.), particularly 158 and 160 and the Labor Management Reporting and Disclosure Act of 1959 (29 USC 401 et seq.) provide remedies for redress of such complaints." Defendants moved to strike the allegations of para. 5 of the complaint on the basis that relief is afforded by the

L M R A through the National Labor Relations Board, or, if the alleged discrimination is a violation of the agreement between the Alaska chapter of the Associated General Contractors, private actions for breach of contract. Similarly, defendants moved to strike paragraphs X and XI on the same grounds.

"Plaintiff's Motion for Preliminary Injunction"

On January 11, 1968 the State moved for a preliminary injunction restraining defendants, their officers, agents, employees and any person in active participation or concert with them from dispatching members for employment, from operating a hiring hall or engaging in any other activity of a labor organization within the State of Alaska which (a) unfairly discriminates against any member of defendant Local 302 or (b) violates his right to seniority preference in employment under existing labor-management contracts or (c) grants a preference, not based on seniority right, to non-Alaska resident members of Local 302 or (d) violates any affirmative requirement of law, regulation of the State of Alaska or any of its regulatory agencies of competent jurisdiction. The motion was supported by the affidavit of the Commissioner of Labor, affidavits of individuals, a copy of the official report of a Special Senate Committee of the Alaska Legislature investigating local autonomy, and a Petition for Redress of grievances directed to the Governor of the State, signed by resident members of Local 302.

On February 16, plaintiff's motion for preliminary injunction and defendant's motion to dismiss were argued before the Court, the parties already having filed extensive memoranda in support of their respective positions. Following argument, the plaintiff was given 10 days and defendant was given to the 4th of March to file, respectively, answering memoranda on the defendant's motion to dismiss and defendant's reply. The motion for preliminary injunction was taken under advisement. The motion to dismiss will be taken under advisement when memoranda have been filed.

I.

Preliminary Injunction

As defendants correctly point out in their second supplemental memorandum filed February 16, 1968 (p. 1.) a Court should not issue a preliminary injunction "where there is a dispute of fact or as to the legal rights of the parties". *Alaska Sales & Service v. Rutledge*, 15 Alaska 433 (DC Alaska 1955). As the Court there noted "the power of the Court to issue such an injunction must be exercised sparingly and cautiously and only after full conviction on the part of the Court of its urgent necessity, and upon sufficient proof of conditions showing such irreparable injury which cannot adequately be compensated by damages at law . . ."

Although defendants denied that, as a question of fact, the wrongs complained of in the complaint and in the motion for preliminary injunction exist, de-

fendants, in argument assumed, *arguendo,* that certain portions of the State charges are true. In argument, defendant expressed shock that the State, through the Attorney General conceded that there were constitutional questions with regard to the Alaska Local Autonomy Law. However, the very existence of those constitutional questions invites this Court to give such constitutional questions its attention and to resolve them. Certainly, if the parties consider that such questions have not been answered with proper finality by this Court, the avenues of appellate procedure are open to them.

As I see it, the questions before this Court are twofold:

1. Has jurisdiction of the matters here sought to be litigated been preempted by the Labor Management Relations Act and the Labor Management Reporting and Disclosure Act, supra, pursuant to the Supremacy Clause of the U.S. Constitution (Art. VI)?
2. Does the State of Alaska have such interest in the subject of this litigation, and in the result sought to be achieved, to enable it to maintain this action and motion for preliminary injunction?

Since, as stated, the question must first be decided whether the subject matter of this litigation is within this Court's competence, that matter first be disposed of.

The question of the power remaining in the respective states, following enactment of the Labor

Management Relations Act of 1947, has been considered extensively by the United States Supreme Court, and by lesser courts, Federal and State.

Admittedly, the residual power of regulation of labor-management relations has been construed narrowly in these decisions. Action on the part of states which are construed as coercive and therefore forbidden under the Act to employers and unions, in respect of burdens of making charges, has very recently been construed by the U.S. Supreme Court as likewise prohibited to the states. Thus, e.g. in *Nash v. Florida Industrial Commission et al.*, 36 L.W. 4046 (Dec. 5, 1967) the Court held that the supremacy clause and the National Labor Relations Act prohibit the State of Florida, through its Unemployment Compensation Commission, to deny such compensation to a person who had filed a charge of unfair labor practice against her employer with the N.L.R.B. on the basis that the pendency of such charge constituted a "labor dispute". Florida law provided that a person was disqualified for unemployment benefits when his unemployment is due to a labor dispute. The test the Court applied in Nash, as in *Hill v. Florida* 325 US 538 (1945) is whether the local regulation stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . ."

In a case by case evolution the United States Supreme Court has continued to examine the scope of the intendment by Congress to control labor-management problems under a national policy. The Supreme Court, which earlier followed a rather doctrinaire

approach to the problem, and considered the preemption of the field rather complete, created new, unanticipated tensions in Federal-State relationships, causing the Court to recognize that Congress may not have acted with omniscience, anticipating every problem that might arise in respect of matters affecting commerce between the states in the generic sense, but in fact only peripherally, and that Congress did not intend such preemption to be absolute.

Thus, in *International Association of Machinists v. Gonzales* 356 US 617, 2 L Ed 1018 (1958) the Court recognized a right by a union member claiming to have been expelled from membership in violation of his rights under the union constitution and by-laws to sue in a state court (Calif.) for re-instatement and for damages, on a claim of illegal expulsion. There, the union petitioner *admitted* that the state had equity jurisdiction to order re-instatement but challenged the jurisdiction of the state court to award damages in breach of contract. Justice Frankfurter reasoned that the mere coincidence of some authority of the National Labor Relations Board, to award back pay to the respondent did not afford him a complete remedy and that the doctrine of preemption would not apply for that reason. "Although if the Union's conduct constituted an unfair labor practice the Board might possibly have been empowered to award back pay, in no event could it mulct in damages for mental or physical suffering. And the possibility of partial relief from the Board does not, in such a case as is here presented, deprive a party of available state remedies for all damages suffered".

Similarly, it has been held that Sec. 301 of the Labor Management Relations Act, authorizing, in subsection (a), actions for violation of contracts between employers and labor organizations to be brought in Federal Court, does not indicate a preemption to the Federal Courts of jurisdiction in this area of litigation. *Local Teamsters 174 etc. vs Lucas Flower Co.* 369 US 95, 7 L Ed 2d 593 (1962). State courts have concurrent jurisdiction therein. *McCarroll vs Los Angeles County District Council of Carpenters* 315 P 2d 322 (Calif. 1957) cert. denied. 355 US 932 2 L Ed 2d. 415. *General Building Contractors Association vs Local 542,* 87 A 2d 250 (Penna. 1952), *Lion Oil Co. vs Marsh,* 249 SW 2d 569 (Ark. 1952).

In 1954 the Supreme Court held in *United Construction Workers vs Laburnum Construction Corp.* 347 US 656, 98 L Ed 1025 that the Virginia State courts had jurisdiction over an action by an employer against certain unions for damages for loss of profits where defendants forced abandonment of certain projects by intimidation of plaintiff's officers and employees with violence during union organization activities. The Court noted that, while such conduct violated Sec. 8 (b) (1) (29 USC 158 (b) (1)), "Congress has neither provided nor suggested any substitute for the traditional state courts procedure for collecting damages for injuries caused by tortious conduct". The Court had, shortly before held in *Garner vs Teamsters* 346 US 485, 98 L Ed. 228 (1953) that an employer may not maintain an injunction action against organizational picketing because the National Labor Relations Board, under Sec. 8 (b) (2), NLRA

had power to entertain the employer's grievance and to bring its own action for injunction against the union in Federal court to protect the employer.

In 1957 the Supreme Court held that an Arkansas equity court possessed the power to enjoin strikers and union representatives in concert with them from threatening violence and intimidating employees at an Arkansas plant and this was not within the preempted domain of the National Labor Relations Board. *Youngdahl vs Rainfair* 355 US 131 2 L Ed. 2d 151 (1957). At the same time the Court held in *Youngdahl* that peaceful picketing was not within the province of the local court.

While *San Diego Building Trades Council vs Garmon* 359 US 236 3 L Ed. 2d 775 (1959) fails to provide turn-key criteria for determining Federal-State jurisdictional issues, the separate opinion of Justice Harlan, in which Justices Clark, Whittaker and Stewart concur, states valuable guidelines for examination in similar cases. The opinion states (3 L Ed 2d 786)

> "The threshold question in every labor preemption case is whether the conduct with respect to which a state has sought to act is, or may fairly be regarded as, Federally protected activity. Because conflict is the touchstone of preemption, such activity is obviously beyond the reach of all state power".

The concurring Justices noted the similarity of principles in *Laburnum*[1] and *International Union,*

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[1] *United Construction Workers vs Laburnum Construction Corp.* 347 US 656, 1954.

United Automobile etc. Workers vs Russell 356 US 634 2 L Ed 2d 1030 in which the motivating principle of the court in sustaining the jurisdiction of the state court was that union conduct which is Federally protected ousts the state courts of jurisdiction whereas, Union conduct which is Federally prohibited may still permit state courts to assume jurisdiction, including relief by way of injunction. (Garmon 3 L Ed 2d 786) Garmon 3 L Ed 2d 784.

Turning to the most recent Alaska pronouncement on the issue generally, the Alaska Supreme Court held in *Stites vs Local 367* 430 P 2d 153 (Alaska 1967) that Federal law had preempted the state's jurisdiction in a suit by a member of a local union claiming discrimination in dispatching to jobs by the Union. The Court, citing *Garmon* supra (3 L Ed 2d 775) held that it was reasonably arguable" that the matter comes within the jurisdiction of the National Labor Relations Board and that "*in the absence of an overriding state interest* such as that involved in the maintenance of domestic peace, state courts must defer to the exclusive competence of the National Labor Relations Board in cases in which the activity that is the subject matter of the litigation is arguably subject to the protection of Sec. 7 or the prohibition of Sec. 8 of the National Labor Relations Act". (italics supplied)

In a dissent, Justice Rabinowitz suggested strongly that decision in the case should have been deferred so that counsel might submit additional briefs on the impact of *Vaca vs Sipes* 386 US 171, 17 L Ed 2d 842 (1967).

The *Vaca* decision, written by Associate Justice White, holds that not only a wrongfully expelled union member (Gonzales) but also a discharged union member employee has the right to have his claim against the Union for "arbitrary" refusal to prosecute a grievance with the employer to arbitration to a state court (Missouri) for redress. As he states in the decision;

> "A primary justification for the preemption doctrine—the need to avoid conflicting rules of substantive law in the labor relations area and the desirability of leaving the development of such rules to the administrative agency created by Congress for that purpose—is not applicable to cases involving alleged breaches of the union's duty of fair representation. The doctrine was judicially developed in *Steele* (vs Louisville and N R Co., 323 US 192 89 L Ed. 173) and its progeny suits alleging breach of the duty remained judicially cognizable long after the N L R B was given unfair labor practice jurisdiction over union activities by the L M R A****** This court recognized in *Steele* that the Congressional grant of power to a union to act as exclusive collective bargaining representative, with its corresponding reduction in the individual rights of the employees so represented, would raise grave constitutional problems if unions were free to exercise this power to further racial discrimination. 323 US 198, 199, 89 L Ed 180, 181.
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> "Since that land-mark decision, the duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of Federal labor law. Were we to hold,

as petitioners and the government urge, that the courts are foreclosed by the N L R B's *Miranda Fuel* decision from this traditional supervisory jurisdiction; the individual employee injured by arbitrary or discriminatory union conduct could no longer be assured of impartial review of his complaint, since the Board's General Council has un-reviewable discretion to refuse to institute an unfair labor practice complaint. See *United Electrical Contractors Assoc. vs. Ordman* 366 F 2d 776, cert. denied 385 US 1026. The existence of even a small group of cases in which the Board would be unwilling or unable to remedy a union's breach of duty would frustrate the basic purposes underlying the duty of fair representation doctrine".

"For these reasons, we cannot assume from the N L R B's tardy assumption of jurisdiction in these cases that Congress, when it enacted L M R A Sec. 8 (b) in 1947, intended to oust the courts of their traditional jurisdiction to curb arbitrary conduct by the individual employee's statutory representative".

Section 8 (b)[1] of the L M R A, defining unfair labor practices by labor organizations and their agents, does not directly proscribe the activity complained of in plaintiff's motion for a preliminary injunction, although discriminatory conduct toward union members by union officers has been held to violate 8 (b) (2) and 8 (a) (3) cognizable by the N L R B even though encouragement or discouragement of union

[1] 29 USC 158 (b)

membership was not the direct issue. *N.L.R.B. vs A & B vs Zinmon Inc.* 372 F 2d 444 (C.A. N.Y. 1967).

The administrative remedy is however not sufficient to afford the relief here sought by plaintiff. While the Board has power to seek the aid of a court enjoining unfair labor practices (sec. 101 (j)[1] and in enforcing its orders for back pay and reinstatement (101 (c)), there is no compulsion upon the Board to act in respect of any particular charge of violation, or accumulation of such charges, as here. The General Council has the discretion to file or not file a formal complaint, to set Board proceedings in motion.

In 1967 the Alaska Legislature held hearings on SB 38, the bill which became the Local Autonomy Law, against a background of considerable public outcry for such legislation. The Legislature enacted the bill as Ch. 8, SLA 1967. Passage of this bill followed defeat of a similar bill introduced in the previous session of the Alaska Legislature. This legislation arose out of complaints that unions not maintaining locals in Alaska were not giving favorable treatment to Alaska residents, and were discriminating on dispatch from out-of-work lists in favor of members not resident in Alaska.

Attached to the affidavit of J. Duane Vance, one of defendant's counsel, dated February 2, 1967, in the Judiciary Committee Report on Senate Bill 38, in which Committee Chairman Fink states "The bill does interfere with the internal affairs of a union but may

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[1]29 USC 160 (j)

represent the desires of a majority of the Alaskan members and Alaskans in general".

Plaintiff has supported its motion with numerous exhibits, A through G, supplemented since the motion was first filed by Exhibit H, and an affidavit of Thomas J. Moore, Commissioner, Department of Labor, State of Alaska dated February 7, 1968, to which are attached copies of documents from official files of the Department. Much of this material has to do with investigations of complaints by the Department of Labor during 1965, under the administration of Governor William A. Egan, at the Governor's request. As a result of this investigation, then Commissioner Johnson in a draft report determined that contractors on the Seward Dock construction with 72 employees had about 25% local hire, and that out-of-town men had been dispatched to the contractor while local members of defendant union were unemployed, with an indication that the unemployed members were recalcitrant with respect to signing a petition against local autonomy circulated by officials of Local 302. Other individuals who reported difficulty in being referred to jobs, or in keeping jobs they had obtained when Local 302 was the bargaining agent for the employees, reported similar experience with respect to their refusal to sign the petition circulated by the union officials, or their activity in favor of local autonomy. The Commissioner considered the evidence not conclusive enough to support a recommendation to the N L R B for action. Attached to the report were statements by members of Local 302 who had been connected in some

way with the local autonomy movement, and had colloquies with the officials of Local 302 respecting the treatment they should anticipate for such participation. Their employment records were consistent with these conversations. One employer (M-B Construction) claimed to have only Alaska residents on job. The investigation appears to have had a salutory effect. Mr. Nagel, the investigator, reported in a memorandum to the Commissioner on July 2, 1965: "Of interest is the fact that two days after an investigation was conducted on the Kenai Peninsula, the preponderance of unemployed 302 operators were dispatched and are presently employed".

Exhibit A is an affidavit of Leo A. Phillips, a member of Local 302, and of the Alaska Operating Engineers Committee for Local Autonomy (hereinafter referred to as "Local Autonomy Committee"). The affidavit furnished factual information concerning existing collective bargaining agreements and operation of the union hiring hall for out-of-work members. The affidavit states that the lack of a locally chartered organization, with majority control outside of Alaska, has resulted in discrimination on jobs against Alaska residents, with resulting deprivation to their families, the communities in which they reside, the unemployment and other welfare programs of the State, inability of resident members to obtain sufficient work experience to establish seniority positions and consequent economic loss to the State.

Exhibit B, an affidavit by Labor Commissioner Moore, reciting that as a result of numerous com-

plaints received by his office from individuals purporting to be members of Local 302 alleging that Local 302 discriminated against such individuals by dispatching non-residents to jobs in the State, and that, as a result of these complaints, some of which were under oath before the Alaska State Senate Investigation Committee at Anchorage, (July 6, 1967), the Department of Labor promulgated emergency regulations, Title 8, Labor, Division 2, Industrial Relation Section 400—402 inclusive, requiring registration of locally chartered unions with the Commissioner of Labor. The affidavit recites that no union, including defendant International, complied with the regulation.

Exhibit C is a report of the Special Senate Committee to investigate Local Autonomy, which met at Anchorage on July 6, 1967, at which sworn testimony was taken from numerous witnesses. The Committee based on this testimony made findings that "there has been widespread employment discrimination against Alaskan residents by the officers and management of Local 302 . . . and particularly against Alaskan resident members of the Union who are known to be in favor of local autonomy," and that "a substantial number of Alaskan residents, members of that union, who are fully qualified to be employed as operating engineers are presently unemployed, while out of state members are presently of the local or other locals of the same international union are dispatched to work on construction jobs in this state without any regard to seniority."

Exhibit F (there were no exhibits "D" or "E") is an affidavit of Max McCurdy (reportedly cate-

gorized by defendant Local as a "trouble maker" see attachment to Thomas J. Moore affidavit of February 7, entitled "Max McCurdy, SSA #527-07-4689"). Mr. McCurdy "reports termination of his employment with Marathon Oil Company, not a signatory to the labor-management agreement between defendant local and the Alaska General Contractors of America, Inc., pursuant to which agreement the defendant Local's hiring hall is operated, and that such termination was brought about by defendants." Mr. McCurdy alleges that defendant Local and its officers were motivated in procuring such discharge by his, McCurdy's, activities on behalf of the Local Autonomy Committee.

Exhibit G is a petition to the Governor and the State Department heads and legislative leaders, wherein the signatories complain of discriminatory hiring practices against them, "preferential treatment in favor of non-Alaskans, mismanagement of local union affairs and individual persecution of those members who attempted to redress their grievances." The petitioners seek "public and private pressure" in having an autonomous Local Union organized and in instituting fair and equitable hiring and dispatching practices. The petitioners ask that the relief sought be instituted at once because of the period of construction season and the economic hardship which would otherwise result.

Defendants, in opposition to these assertions, rely principally on the affidavit of Russell T. Conlon, business manager of Local 302. Mr. Conlon's affidavit

refers to the NLRB certification of Local 302 as bargaining representative for the employees of member contractors of the Alaska Chapter of the Associated General Contractors, and the maintenance, under the basic labor-management contract with said Association, of a "non-discriminatory hiring hall through which the employers are required to requisition employees." Mr. Conlon's affidavit asserts that compliance with the Alaska Local Autonomy Law would require abandonment of representation of employees who are members of Local 302, and the loss of substantial amounts of accrued pension rights and health and welfare benefits to such employees. The affidavit makes reference to a "small group of members of Local 302" seeking to establish a local and of their formation of a Local Autonomy Committee. Five of these individuals filed charges against Local 302 with the NLRB, alleging discrimination because of activity on behalf of the Local Autonomy Committee. (Exhibits 68-71 incl.) As indicated therein, the charges of four of these individuals were withdrawn with the approval of the Acting Regional Director of the National Labor Relations Board, without prejudice in reported actions on October 6, 1967. The reasons for withdrawal are not clear. Mr. Conlon's affidavit states that the charges by Martin B. Fanelli were "without merit and were dismissed" and that other charges were withdrawn. Why these charges were withdrawn is not demonstrated by the record, but there is no indication in the record that the charges were considered on their merits. Finally, Mr. Conlon asserts that the relief sought (i.e. preliminary in-

junction) will cause Local 302 and the employees represented by it, to lose their "constitutional rights to do business in . . . Alaska; to administer their contract; to freely assemble and discuss, control and decide upon litigation to determine their rights, to conduct elections and to vote therein without coercion, all in violation of . . . federal constitutional rights."

II.

Findings of Fact

The relief sought by the preliminary injunction (see pp 4 and 5 hereof), will obviously not accomplish the evils foreseen by Mr. Conlon. The State asks merely that defendants conduct themselves in such manner in the State of Alaska that the discriminatory practices complained of will not take place until the matter can be tried on its merits.

I find that the State has, by the conduct referred to above (referring to the State's exhibits) made at least a prima facie showing that defendants have systematically discriminated against Alaskan residents who are qualified members of Local 302, and have favored non-resident members of said Local in referring members to jobs. These practices, I find, are harmful, not only to the members against whom the discrimination is practiced, but to the people of the State of Alaska, in requiring the outlay of public funds for unemployment and welfare relief for such members and their families, and in depriving such members of earnings which would otherwise flow into

the economy of the State and thereby benefit the citizens of the State generally.

For purposes of preliminary injunction the factual existence of such interest on the part of the State has been sufficiently established by affidavits and exhibits filed by the State. *Hoffritz v. U.S.* 240 F 2d 109 (C.A. 9, 1965).

I find that prohibiting such practices will not interfere with the lawful exercise by the parties thereto of existing labor-management contracts to which Local 302 is signatory, nor with the rights of any member of said local under pension and health and welfare benefit plans.

III.

Conclusions of Law

I find, as a matter of law, that prohibition by this Court of the discriminatory practices complained of is a proper exercise of this Court's jurisdiction pursuant to AS 22.10.020 and Civil Rule 65, and that the State for the foregoing reasons, has sufficient interest in the subject matter, and in the relief sought, to maintain this action in the promotion of the general welfare *In re Debbs Petitioner* 158 US 564, 39 L Ed. 1092 (1895).

I find that the relief sought is not within an area which has arguably been pre-empted under the Supremacy Clause of the United States Constitution, but is, rather, in the nature of requiring that defendants provide the citizens of Alaska who are members of defendant Local 302 with the fair representation

to which they, and the State and its citizens derivatively, are entitled. *International Assoc. of Machinists v. Gonzales,* supra, p. 8. The practices complained of are as harmful to the welfare of the State as violence at an individual plant, which is clearly enjoinable in a State Court *Youngdahl v. Rainfair* supra, p. 10. I find no conflict with federal authority—the "touchstone of preemption." (*San Diego Building Trades Council v. Garmon,* supra, p. 11.)

The overriding State interest, which was wanting in *Stites v. Local 367,* supra, p. 11, is here manifested.

Nor does the relief sought, with the possible exception of item (d) of the Motion for Preliminary Injunction (hereinafter discussed) depart from the fair representation concept reiterated in *Vaca v. Sipes,* supra, p. 12. Such relief will require only that defendants do only what they are required by agreement and by national law and policy to do—represent fairly and without discrimination those whom they are empowered by such agreements, law and policy to represent. This does not mean Alaska residents must be favored—merely that they may not be discriminated against. There is no interference sought with defendants' rights of free speech, assembly, nor of the obligation of any contract. I see no abridgment, even tangentially, of any constitutionally protected right.

Item (d) of the Motion for Preliminary Injunction seeks an order that defendants be enjoined, *pendente lite,* from practices that violate "any affirmative requirement of law or regulation of the State of

Alaska or any of its regulatory agencies of competent jurisdiction." Presumably, plaintiff has reference to the Local Autonomy Law, and regulations promulgated in pursuance thereof, I find no compelling necessity existing at this time to require, by way of preliminary injunction, that defendants establish a local, *pendente lite*. The State has an adequate remedy at law, through criminal sanction which is currently being pursued. (*State v. Int'l Union of Operating Engineers,* et al No. 67-442 Cr.)

Except as above stated, I find that plaintiff has no complete and adequate remedy at law.

Order

Accordingly, it is hereby ordered that defendants, and each of them, their officers, agents, employees and any person in active participation or concert with them, during pendancy of this action, or until further order of the Court, are hereby restrained, prohibited and enjoined from engaging in dispatching members or others for employment and from maintaining or operating a hiring hall or engaging in any other related business or activity within the State of Alaska which unfairly discriminates against any member of defendant Local 302 or violates his right to seniority preference in employment under existing labor-management contracts, or grants a preference, not based on seniority right, to non-Alaska resident members of defendant Local 302.

Defendants, their officers, agents, employees and any persons in active participation with them are

further restrained, prohibited and enjoined from interfering with duly-designated employees of the Alaska Department of Law or the Alaska Department of Labor in conducing reasonable investigations for the purpose of assuring compliance with this order.

Defendent's Motion to Dismiss is denied. Defendant's alternative motion to strike portions of the complaint is reserved for further advisement and decision.

Done at Anchorage, Alaska, this eighth day of March, 1968.

Eben H. Lewis,
Superior Court Judge.

Appendix D

LAWS OF ALASKA

1967

Chapter No.
8

AN ACT

Making it unlawful not to have local labor organizations in this state; and providing for a penalty.

Be It Enacted By The Legislature Of The State Of Alaska:

*Section 1, AS 23.40 is amended by adding new sections to read:

Sec. 23.40.050. Local Labor Organizations. It shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Alaska not to have at all times one or more duly chartered and established local organizations in this state.

Sec. 23.40.060. Penalty. Any national or international labor organization which violates sec. 50 of this chapter, upon conviction, is punishable by a fine of not less than $1,000 or more than $10,000 for each offense.

Approved by Governor: February 22, 1967
Actual effective date: May 23, 1967

Appendix E

LAWS OF ALASKA

1968

Chapter No.
231

HCSSB 347 am

AN ACT

Relating to labor organizations; and providing for an effective date.

Be It Enacted By The Legislature Of The State Of Alaska:

*Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.045. Records. (a) A person who or labor organization which operates a hiring hall or furnishes labor exclusively under a labor-management contract and which does not have a chartered local in this state shall maintain accurate hiring, dispatching and membership records in accordance with regulations promulgated by the commissioner.

(b) The records required under (a) of this section shall be open to inspection by the commissioner or his authorized representative.

*Sec. 2. AS 23.40 is amended by adding new sections to read:

Sec. 23.40.052. Interference In Chartering Prohibited. It is unlawful for an officer of a national, international or local labor organization, having 100 or more members in good standing

who reside or work in Alaska to wilfully discourage or impede or attempt to discourage or impede, by means of coercion or other unlawful act, the chartering and establishment of a local organization in this state in accordance with sec. 50 of this chapter. However, this section does not apply to a labor organization which has a chartered local in this state.

Sec. 23.40.054. Civil Enforcement. In addition to the criminal penalties provided for in this chapter, the attorney general may enforce the provisions of this chapter by appropriate civil proceedings, including injunctive relief, against threatened, repeated or continuous violations of this chapter or regulations adopted under it. These proceedings may be brought against an international, national or local labor organization or an officer of an international, national or local labor organization.

Sec. 23.40.056. Exemptions. (a) The commissioner may grant an exemption from the provisions of secs. 45-60 of this chapter to a labor organization which

(1) has so few members who reside in Alaska that chartering and operating a local would work a financial hardship on these members;

(2) maintains local-hire preference provisions in all of its labor-management agreements in the state; or

(3) maintains provisions in its constitution and bylaws for the election, by and from among the members of the organization who reside in Alaska, of a business agent or other person in charge of hiring hall in Alaska, and of dispatch and grievance procedures.

(b) Exemptions granted under this section shall be applied for and issued on an annual basis in accordance with regulations adopted by the department.

*Sec. 3. AS 23.40.060 is repealed and re-enacted to read:

Sec. 23.40.060. Penalties. (a) A national or international labor organization which violates sec. 50 of this chapter, upon conviction, is punishable by a fine of not less than $1,000 or more than $10,000.

(b) An officer of a national, international or local labor organization who violates sec. 52 of this chapter is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment of not more than one year, or by both.

(c) Failure to maintain accurate records in accordance with sec. 45(a) of this chapter and the regulations promulgated under it is a misdemeanor punishable by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both.

(d) Wilful failure to comply with sec. 45(b) of this chapter is a misdemeanor punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

*Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by Governor: May 8, 1968

Actual effective date: May 9, 1968